

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Community Development

Council Meeting Date: 12/6/2012

Department Contact: Ken Benion

Phone # 5427

Contract or Agreement: Agreement

Document Name: Agreement to Restructure Loan and Modify Promissory Note Between City of and Spr...

City Obligation Amount: 0.00

Total Project Budget: 0.00

Uncommitted Account Balance: 0.00




Account Number: NA

Procurement Agreements

<u>Not Applicable</u>	<u>Not Applicable</u>
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Grant-Funded Agreements

<u>Not Applicable</u>	Grant Name:
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Department	Signature	Date
1) Originating		12/3/12
2) Legal		12-5-12
3) Finance		12/5
4) Originating		
5) Copy Distribution		
a. Mayor's office (2 copies)		
b. Clerk-Treasurer (Original & 2 copies)		
c. Legal (1 copy)		

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 12/6/2012

Action Requested By:
Community
Development

Agenda Item Type
Resolution

Subject Matter:

Resolution to enter into an agreement to restructure loan and modify promissory notes and assumption of loans by Spring Branch Ltd.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into an agreement to restructure UDAG and CDBG loans and modify promissory notes and assumption of loans by Spring Branch Ltd.

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

The agreement will allow NBA to sell and convey the property secured by said mortgages to Spring Branch, Ltd. and make further modifications and improvements to the property for the benefit of those persons in the community in need of adequate affordable housing

Associated Cost: 0.00

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head: 

Date: 12/3/2012

RESOLUTION NO. 12-_____

WHEREAS the City Council of the City of Huntsville, Alabama, does hereby declare in accordance with Code of Alabama (1975) that the Mayor be, and is hereby authorized to enter into an Agreement to restructure UDAG and CDBG loans, modify promissory notes and assumption of loans between the City of Huntsville and Spring Branch Ltd., on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Agreement to restructure UDAG and CDBG loans, modify promissory notes and assumption of loans by and between the City of Huntsville and Spring Branch Ltd.," consisting of twenty-eight (28) pages, including attachments, and the date of December 6, 2012 appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 6th day of December, 2012.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 6th day of December, 2012.

Mayor of the City of
Huntsville, Alabama

**AGREEMENT TO RESTRUCTURE LOAN,
MODIFY PROMISSORY NOTES, AND ASSUMPTION THEREOF**

Recitals:

WHEREAS, on or about the first (1st) day of June, 1999, NBA, LTD., an Alabama limited partnership ("NBA") did execute and deliver to the City of Huntsville, Alabama, a municipal corporation within the State of Alabama (hereinafter "City") two (2) separate Modification and Restatement of Promissory Notes whereby it agreed to pay to the City certain sums upon certain terms and conditions of repayment; and

WHEREAS, said Promissory Notes are secured by certain mortgages which are found in Mortgage Book 1653, at Pages 1066-1069, in Mortgage Book 1944, at Pages 321-325, in Mortgage Book 2548, at Pages 456-459, in Document Number 20111221000697960, in Mortgage Book 1756, at Pages 624-626, in Mortgage Book 1944, at Pages 316-320, in Mortgage Book 2548, at Pages 452-455, and in Document Number 20111221000697970, all in the Office of the Judge of Probate of Madison County, Alabama; and

WHEREAS, said Mortgages were all secondary, subordinate and inferior to a mortgage originally in favor of First American Federal Savings and Loan Association; and

WHEREAS due to changes in the low to moderate income housing rental market have creating unanticipated reductions in rental income and the need by NBA to address necessary improvements and repairs of the building(s) located upon the property secured by the aforesaid mortgages in order to continue to provide residential dwelling units for individuals and families whose income does not exceed eighty percent (80%) of the Huntsville area median income, NBA did request that the City subordinate said mortgages to a new mortgage in favor of Bancorpsouth Bank (the "Bank") in the principal amount of \$1,450,000.00; and

WHEREAS, the City did agree to subordinate its mortgages and debts to such new mortgage and did subordinate its mortgages and debts to such new mortgage; and

WHEREAS, NBA now desires to sell and convey the property secured by said mortgages to Spring Branch, Ltd. ("Spring Branch"); and

WHEREAS, Spring Branch will make further modifications and improvements to the property for the benefit of those persons in the community in need of adequate affordable housing; and

WHEREAS, Spring Branch will borrow sums from PNC Bank, National Association ("PNC"), in order to pay in full the Bancorpsouth Bank loan and make such additional improvements to the property; and

WHEREAS, Spring Branch will additionally assume the terms of the loans from the City and agree to be bound thereby (subject to certain modifications and amendments thereto); and

WHEREAS, PNC requires the City to subordinate its loans to the loan(s) of PNC to Spring Branch, to accept certain restructuring of its notes and loans as heretofore referenced, and does further require the City to consent to certain riders to the City's loan documents, including the mortgages; and

WHEREAS, it is to the benefit of the City to provide such low income housing, such necessary

improvements to said low income housing and to protect its collateral interest in the property described in the mortgages and the City has therefore agreed to the terms and conditions as set forth above and hereafter, including the subordination of its mortgages to the mortgage of PNC up to the amount of the new loan(s) by PNC to Spring Branch; and

WHEREAS, the City has further agreed and consented to the assumption of its loans by Spring Branch.

NOW, THEREFORE, the premises considered, and for good and valuable considerations to the City, Spring Branch and NBA, such considerations being hereby acknowledged, the City, Spring Branch and NBA do hereby agree to the following terms and representations, effective on the day of this Agreement:

Representations

1. The unpaid balance on the CDBG program loan is \$ 283,190.00.
2. The unpaid balance on the UDAG program loan is \$ 807,392.00.
3. NBA is still the owner of Lot 4, Block 1, according to the map of survey of the resurvey of Lot 4, Block 1, Binford Court Subdivision, Huntsville, Alabama, as recorded in Plat Book 26, at Page 20, Probate Records of Madison County, Alabama (the "Property") and has not transferred or otherwise encumbered the Property other than the mortgages to the City and the Mortgage in favor of Bancorpsouth Bank (and an accompanying Assignment of Contracts).
4. NBA is not in default upon the terms and conditions of the loan from Bancorpsouth Bank. There are no claims or civil actions pending or threatened which would in any way, directly or indirectly, jeopardize the priority or enforceability of the notes now held by the City or the mortgages which secure said notes.
5. The general partners of NBA have authorized the sale and conveyance of the Property, the general partners of Spring Branch have authorized the purchase of the Property and the assumption of the indebtedness of NBA to the City and the City has received such approval as is necessary for acceptance of such assumption, such subordination, such restructuring and to enter into this Agreement.

Amendments

- A. The CDBG program loan will be, and is hereby, amended as reflected on the Modification and Restatement of Promissory Note attached hereto and incorporated as if set forth in full herein.
- B. The UDAG program loan will be, and is hereby, amended as reflected on the Modification and Restatement of Promissory Note attached hereto and incorporated as if set forth in full herein.
- C. The City will subordinate the debts and mortgages heretofore described, to a new loan and mortgage from PNC with a principal balance of One Million Seven Hundred Thirty-five Thousand and No/100 (\$1,735,000.00) Dollars, including each and every term set forth therein, and will execute the Subordination Agreement attached hereto and incorporated as if set forth in full herein.

NO WAIVER: Except as is expressly modified, amended and set forth herein, the City does not relinquish nor waive any right which it may now have or may hereafter acquire concerning the debts owed to it by NBA and/or the documents associated therewith.

ENTIRE AGREEMENT: This Agreement and the amended promissory notes and mortgages heretofore referenced, as well as the subordination agreement to be executed by City as previously set forth herein, contain the entire agreement by and between the parties. No covenant, term, or condition and not representations shall be binding upon any party hereto unless appearing herein and in the agreed upon amended promissory notes and subordination of mortgages.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives on this the _____ day of December, 2012.

NBA, LTD., an Alabama limited partnership

By: Neighborhood Concepts, Inc.
Its: Operating General Partner

By: _____
Mary Ellen Judah
Its: Executive Director

CITY OF HUNTSVILLE, ALABAMA, a
municipal corporation within the State of
Alabama

ATTEST: _____
Charles E. Hagood
as Treasurer of City Huntsville,
a municipal corporation within the
State of Alabama

By: _____
Tommy Battle
Its: Mayor

SPRING BRANCH, LTD.,
an Alabama limited partnership

By: Spring Branch LLC
Its: General Partner

By: Neighborhood Concepts, Inc.
Its: Manager

By: _____
Mary Ellen Judah
Its: Executive Director

STATE OF ALABAMA

COUNTY OF MADISON

I, the undersigned Notary Public in and for said County and State hereby certify that TOMMY BATTLE and CHARLES E. HAGOOD, whose names as Mayor and Clerk-Treasurer, respectively, of City of Huntsville, Alabama, a municipal corporation within the state of Alabama, are signed to the foregoing Agreement and who are known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, they, as such officers and with full authority to act on behalf of such municipal corporation, executed the same voluntarily for and as the act of said municipal corporation.

GIVEN under my hand and official seal this the _____ day of December, 2012.

Notary Public
My Commission Expires: _____

STATE OF ALABAMA

COUNTY OF MADISON

I, the undersigned Notary Public in and for said County and State hereby certify that Mary Ellen Judah, whose name as Executive Director of Neighborhood Concepts, Inc., an Alabama Corporation acting in its capacity as Manager of Spring Branch, LLC, an Alabama limited liability company, the General Partner of NBA, LTD., an Alabama limited partnership, is signed to the foregoing Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, she, as such Executive Director of said corporation acting in its capacity as General Partner of the Limited Partnership, and with full authority to act in such capacity, executed the same voluntarily for and as the act of said corporation acting in its capacity as General Partner of said Limited Partnership.

GIVEN under my hand and official seal this the _____ day of December, 2012.

Notary Public
My Commission Expires: _____

STATE OF ALABAMA

COUNTY OF MADISON

I, the undersigned Notary Public in and for said County and State hereby certify that Mary Ellen Judah, whose name as Executive Director of Neighborhood Concepts, Inc., an Alabama Corporation acting in its capacity as General Partner of SPRING BRANCH, LTD., an Alabama limited partnership, is signed to the foregoing Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, she, as such Executive Director of said corporation acting in its capacity as General Partner of the Limited Partnership, and with full authority to act in such capacity, executed the same voluntarily for and as the act of said corporation acting in its capacity as General Partner of said Limited Partnership.

GIVEN under my hand and official seal this the _____ day of December, 2012.

Notary Public

My Commission Expires: _____

MODIFICATION AND RESTATEMENT OF
PROMISSORY NOTE
CDBG PROGRAM LOAN

Recitals:

WHEREAS, on or about the 15th day of December, 1989, Huntsville Housing Developments, Inc., did execute and deliver to the City of Huntsville, Alabama, a municipal corporation within the State of Alabama (hereinafter "City") a Promissory Note whereby it agreed to pay Payee (as defined therein) the sum of THREE HUNDRED NINETY THOUSAND AND NO/100 (\$390,000.00) DOLLARS; and

WHEREAS, said Promissory Note was amended on the 25th day of August, 1993 and on same day therewith, Huntsville Housing Developments, Inc. did transfer and convey to NBA, LTD., an Alabama limited partnership ("NBA"), certain property, as same is more particularly described on Exhibit "A" attached hereto and made a part hereof as if set forth in full herein (the "Property") which Property secured said Promissory Note; and

WHEREAS, said Property was originally pledged by Huntsville Housing Developments, Inc. as security for the above described Promissory Note by execution and delivery of a Mortgage which was recorded in Mortgage Book 1653, at Page 1066, in the Office of the Judge of Probate of Madison County, Alabama, which said Mortgage was thereafter amended by an Amended Mortgage recorded on August 25, 1993, in Mortgage Book 1944, at Page 321, also in the Office of the Judge of Probate of Madison County, Alabama; and

WHEREAS, NBA did thereafter enter into a Modification and Restatement of Promissory Note with the City dated June 1, 1999, setting forth new terms and conditions related to the loan, and did further execute and deliver a Second Amended Mortgage recorded in Mortgage Book 2548, at Page 456, in the Office of the Judge of Probate of Madison County, Alabama; and

WHEREAS, NBA did thereafter enter into an Agreement to Restructure Loan and Modify Promissory Note with the City dated November 17, 2011, setting forth new terms and conditions related to the loan, and did further execute and deliver a Third Modification to Mortgage recorded on December 21, 2011, in Document Number 20111221000697960, in the Office of the Judge of Probate of Madison County, Alabama (said Third Modification to Mortgage, along with the Mortgage Amended Mortgage and Second Amended Mortgage heretofore referenced may sometimes hereafter collectively be referred to as the "Mortgage")

WHEREAS, said Mortgage, and all amendments thereto, are presently secondary, subordinate and inferior to a mortgage in favor of BANCORPSOUTH BANK ("Bancorpsouth"); and

WHEREAS, NBA has agreed to sell and convey the Property to SPRING BRANCH, LTD., an Alabama limited partnership ("Spring Branch"); and

WHEREAS, Spring Branch has agree to assume the loan heretofore referenced secured by the Mortgage, upon the modification of certain terms and conditions thereof for the purposes set forth hereafter; and

WHEREAS, in order to facilitate additional financing to extinguish the debt due and owing to Bancorpsouth, as well as address further necessary improvements and repairs of the building(s) located upon the Property in order to continue to provide residential dwelling units for individuals and families whose income does not exceed eighty percent (80%) of the Huntsville area median income, Spring

Branch has requested that the City presently suspend payments pending the completion of such necessary improvements and repairs; and

WHEREAS, new lender of the aforementioned additional financing requires that Spring Branch achieve a Debt Service Coverage Ratio ("DSCR") of 1.2 with an assumption of a fully amortizing loan with an interest rate of 5.75% and a thirty (30) year amortization schedule; and

WHEREAS, Spring Branch further requests that the loan be modified such that the maturity date be extended for thirty (30) years with an interest rate of three (3.0%) percent compounded annually; and

WHEREAS, new lender further requires a first position lien upon the Property in order to lend the sums necessary to pay in full the current loan as well as fund the necessary improvements; and

WHEREAS, it is to the benefit of the City to provide such low income housing and to protect its collateral interest in the Property and the City has therefore agreed to the terms and conditions as set forth above and hereafter, including the subordination of its Mortgage to the mortgage of the new lender up to the amount of the loan.

NOW, THEREFORE, the premises considered, and for good and valuable considerations to both the City and Spring Branch, such considerations being hereby acknowledged, the City and Spring Branch do hereby amend, modify, renew and restate the terms of the promissory note as follows:

PROMISSORY NOTE

FOR VALUE RECEIVED, Spring Branch (hereinafter "Promissor") promises to pay to the order of the City, acting by and through its Department of Community Development, its successors and assigns (hereinafter "Holder"), the sum of Two Hundred Eighty-three Thousand One Hundred Ninety and no/100 Dollars (\$ 283,190.00) (the "Loan"), payable to the Holder at 120 Holmes Avenue, Huntsville, Alabama, or at such other place as Holder may from time to time designate, in the manner hereinafter set forth.

From and after December ____, 2012, the effective date hereof, interest on the Loan shall accrue at the rate of three percent (3.0%) per annum and shall compound annually, on the unpaid balance.

Commencing on May 15, 2014, and continuing on the 15th day of the second month of each new quarter thereafter (such dates being February 15th, May 15th, August 15th, and November 15th each year), Promissor shall pay to Holder such sum as shall be available to Promissor after payment to the first position mortgage lender of a loan in the original principal amount of (and never to exceed) One Million Seven Hundred Thirty-five Thousand and No/100 (\$1,735,000.00) Dollars with an assumed full amortization upon a note with an interest rate of 5.75% per annum and a Debt Service Coverage Ratio (DSCR) of not less than 1.2, but such quarterly payment on the Loan shall never exceed Fifteen Thousand and No/100 (\$15,000.00) Dollars per quarter. For calculation purposes of the amount of the quarterly payment to be paid on the Loan (if any), the DSCR for the preceding quarter of the year (Jan.-Mar., Apr.-June, July-Sept., and Oct.-Dec.) will be reviewed and after applying the heretofore set formula, those sums which are available without exceeding the DSCR of 1.2 will be paid to Holder on the 15th day of the 2nd month following the previous quarter, up to a maximum payment of \$15,000.00.

In order to provide the Holder the ability to confirm and verify the DSCR and payments that are due to Holder, Promissory hereby agrees to provide Holder initial financial statements and a DSCR report upon execution of this Promissory Note and does further agree to provide quarterly DSCR reports and quarterly financial statements in accordance with the payments schedules set forth in the preceding

paragraph and shall provide said DSCR report and financial statements at the time of such quarterly payments.

In addition, the payments made by the Promissor to the City to be applied towards the "UDAG Loan" of the City to the Promissor shall be calculated in determining the DSCR and whether or not payments may be made towards this Note.

The indebtedness shall be amortized over a term of thirty (30) years with interest at three percent (3.0%) compounded annually. If not sooner paid, any and all remaining indebtedness shall be due and payable in full on the first (15th) day of May, 2044 (the "Maturity Date").

NONRECOURSE TO MAKER

(a) Anything contained herein or in the Mortgage to the contrary notwithstanding, neither Promissor nor any general or limited partner of Promissor shall have any personal liability for any breach, default or event of default hereunder or under the Mortgage, and, upon the occurrence of an event of default hereunder or under the Mortgage, Holder's recourse shall be limited to the collateral securing the loan, and no deficiency shall be sought against Promissor or any general or limited partner of Promissor with respect thereto.

(b) Notwithstanding anything herein to the contrary, Promissor hereby makes subject and subordinate the payment of the principal under this promissory note and the Mortgage, together with any and all interest accrued or to accrue thereon and fees and expenses and other amounts incurred by Holder, to the loans (the "Senior Loans") made by any and all current and future mortgage lenders ("Senior Mortgage Lenders"), including PNC Bank, National Association ("PNC"), its successors and assigns, to Promissor, the documents evidencing, supporting or securing the Senior Loans (the "Senior Loan Documents"), the liens and all rights of Senior Mortgage Lenders under the Senior Loan Documents and the payment of principal, interest, fees, costs and expenses and other amounts due and owing under the Senior Loan Documents (including interest accruing after the date on which Promissor becomes subject to the jurisdiction of any federal or state debtor relief statute, whether or not recoverable against Promissor) by Promissor, and Holder agrees, after it has received notice from a Senior Mortgage Lender that a default has occurred and is continuing under the terms of the Senior Loan Documents not to ask, demand, sue for, exercise or take other enforcement actions with respect to any right of setoff or take or receive payment of, or discharge Promissor from all or any part of, the amounts due under this promissory note or the Mortgage unless and until the Senior Loans, and all other amounts due Senior Mortgage Lenders under terms of the Senior Loan Documents, shall have been fully and undefeasibly paid in cash and discharged as provided in that certain Intercreditor and Subordination Agreement among Promissor, PNC and the City.

Promissor reserves the right to prepay this debt at any time, in whole or in part without payment of penalty, premium or fee. All payments made by Promissor shall be applied first to the interest due and then to the principal.

In the event the undersigned shall fail to pay any sum herein required to be paid when due and if such failure be subsisting on the date the next installment payment under this Note becomes due and payable, the unpaid principal amount of this note, together with accrued interest, shall become immediately due and payable, at the option of the Holder, without notice to the undersigned. Failure of the Holder to exercise such option shall not constitute a waiver of such default.

If any scheduled payment is in default more than ten (10) days, the undersigned shall pay to the Holder a late charge not to exceed five percent (5.0%) per annum of the amount of such scheduled monthly payment in default. If said Note be reduced to judgment, such judgment shall bear the statutory interest rate on judgments.

This Note is secured by the Mortgage as heretofore referenced.

Demand, protest and note of demand and protest are hereby waived, and the undersigned hereby waives, to the extent authorized by law, any and all homestead and other exemption rights which otherwise would apply to the debt evidenced by this Note.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed by its duly authorized representative, as of the _____ day of December, 2012.

SPRING BRANCH, LTD.,
an Alabama limited partnership

By: Spring Branch, LLC
Its: General Partner

By: Neighborhood Concepts, Inc.
Its: Managing Member

By: _____
Mary Ellen Judah
Its: Executive Director

The foregoing terms, conditions, modifications, and amendments, including the recitals which are set forth in this Modification and Restatement of Promissory Note, are hereby ratified, affirmed, approved and accepted as of the _____ day of December, 2012.

CITY OF HUNTSVILLE, ALABAMA, a
municipal corporation within the State of
Alabama

ATTEST: _____
Charles E. Hagood
as Clerk-Treasurer of City Huntsville,
a municipal corporation within the
State of Alabama

By: _____
Tommy Battle
Its: Mayor

EXHIBIT A

LEGAL DESCRIPTION

Lot 4, Block 1, according to the map of survey of the resurvey of Lot 4, Block 1, Binford Court Subdivision, Huntsville, Alabama, as recorded in Plat Book 26, at Page 20, Probate Records of Madison County, Alabama (the "Property").

MODIFICATION AND RESTATEMENT OF
PROMISSORY NOTE
UDAG PROGRAM LOAN

Recitals:

WHEREAS, on or about the 2nd day of October, 1991, Huntsville Housing Developments, Inc., did execute and deliver to the City of Huntsville, Alabama, a municipal corporation within the State of Alabama (hereinafter "City") a Promissory Note whereby it agreed to pay Payee (as defined therein) the sum of ONE MILLION NINETEEN THOUSAND FIVE HUNDRED AND NO/100 (\$1,019,500.00) DOLLARS; and

WHEREAS, said Promissory Note was amended on January 9, 1992 and again on the 25th day of August, 1993, and again on June 1, 1999; and

WHEREAS, Huntsville Housing Developments, Inc. did also on the 25th day of August, 1993, transfer and convey to NBA, LTD., an Alabama limited partnership ("NBA"), certain property, as same is more particularly described on Exhibit "A" attached hereto and made a part hereof as if set forth in full herein (the "Property") which Property secured said Promissory Note; and

WHEREAS, said Property was originally pledged by Huntsville Housing Developments, Inc. as security for the above described Promissory Note by execution and delivery of a Mortgage recorded on October 23, 1991, in Mortgage Book 1756, at Pages 624-626, which said Mortgage was thereafter amended by an Amended Mortgage recorded on August 25, 1993, in Mortgage Book 1944, at Pages 316-320, both in the Office of the Judge of Probate of Madison County, Alabama; and

WHEREAS, NBA did thereafter enter into an Agreement to Restructure Loan with the City dated June 1, 1999, setting forth new terms and conditions related to the loan, and did further execute and deliver a Second Amended Mortgage recorded on June 3, 1999, in Mortgage Book 2548, at Pages 452-455, in the Office of the Judge of Probate of Madison County, Alabama; and

WHEREAS, NBA did thereafter enter into an Agreement to Restructure Loan and Modify Promissory Note with the City dated November 17, 2011, setting forth new terms and conditions related to the loan, and did further execute and deliver a Third Modification to Mortgage recorded on December 21, 2011, in Document Number 20111221000697970, in the Office of the Judge of Probate of Madison County, Alabama (said Third Modification to Mortgage, along with the Mortgage Amended Mortgage and Second Amended Mortgage heretofore referenced may sometimes hereafter collectively be referred to as the "Mortgage"); and

WHEREAS, said Mortgage, and all amendments thereto, are presently secondary, subordinate and inferior to a mortgage in favor of BANCORPSOUTH BANK ("Bancorpsouth"); and

WHEREAS, NBA has agreed to sell and convey the Property to SPRING BRANCH, LTD., an Alabama limited partnership ("Spring Branch"); and

WHEREAS, Spring Branch has agree to assume the loan heretofore referenced secured by the Mortgage, upon the modification of certain terms and conditions thereof for the purposes set forth hereafter; and

WHEREAS, in order to facilitate additional financing to extinguish the debt due and owing to Bancorpsouth, as well as address further necessary improvements and repairs of the building(s) located upon the Property in order to continue to provide residential dwelling units for individuals and families whose income does not exceed eighty percent (80%) of the Huntsville area median income, Spring Branch has requested that the City presently suspend payments pending the completion of such necessary improvements and repairs; and

WHEREAS, new lender of the aforementioned additional financing requires that Spring Branch achieve a Debt Service Coverage Ratio ("DSCR") of 1.2 with an assumption of a fully amortizing loan with an interest rate of 5.75% and a thirty (30) year amortization schedule; and

WHEREAS, Spring Branch further requests that the loan be modified such that the maturity date be extended for thirty (30) years with an interest rate of three (3.0%) percent compounded annually; and

WHEREAS, new lender further requires a first position lien upon the Property in order to lend the sums necessary to pay in full the current loan as well as fund the necessary improvements; and

WHEREAS, it is to the benefit of the City to provide such low income housing and to protect its collateral interest in the Property and the City has therefore agreed to the terms and conditions as set forth above and hereafter, including the subordination of its Mortgage to the mortgage of the new lender up to the amount of the loan.

NOW, THEREFORE, the premises considered, and for good and valuable considerations to both the City and Spring Branch, such considerations being hereby acknowledged, the City and Spring Branch do hereby amend, modify, renew and restate the terms of the promissory note as follows:

PROMISSORY NOTE

FOR VALUE RECEIVED, Spring Branch (hereinafter "Promissor") promises to pay to the order of the City, acting by and through its Department of Community Development, its successors and assigns (hereinafter "Holder"), the sum of Eight Hundred Seven Thousand Three Hundred Ninety-two and 00/100 Dollars (\$ 807,392.00) (the "Loan"), payable to the Holder at 120 Holmes Avenue, Huntsville, Alabama, or at such other place as Holder may from time to time designate, in the manner hereinafter set forth.

From and after December _____, 2012, the effective date hereof, interest on the Loan shall accrue at the rate of three percent (3.0%) per annum and shall compound annually, on the unpaid balance.

Upon the latter of completion of the improvements, or May 15, 2014, Promissor shall pay to Holder Four Hundred Thousand and no/100 (\$400,000.00) Dollars.

Commencing on May 15, 2014, and continuing on the 15th day of the second month of each new quarter thereafter (such dates being February 15th, May 15th, August 15th, and November 15th each year), Promissor shall pay to Holder such sum as shall be available to Promissor after payment to the first position mortgage lender of a loan in the original principal amount of (and never to exceed) One Million Seven Hundred Thirty-five Thousand and No/100 (\$1,735,000.00) Dollars with an assumed full amortization upon a note with an interest rate of 5.75% per annum and a Debt Service Coverage Ratio (DSCR) of not less than 1.2, but such quarterly payment on the Loan shall never exceed Fifteen Thousand and No/100 (\$15,000.00) Dollars per quarter. For calculation purposes of the amount of the quarterly payment to be paid on the Loan (if any), the DSCR for the preceding quarter of the year (Jan.-Mar., Apr.-June, July-Sept., and Oct.-Dec.) will be reviewed and after applying the heretofore set formula, those

sums which are available without exceeding the DSCR of 1.2 will be paid to Holder on the 15th day of the 2nd month following the previous quarter, up to a maximum payment of \$15,000.00.

In order to provide the Holder the ability to confirm and verify the DSCR and payments that are due to Holder, Promissory hereby agrees to provide Holder initial financial statements and a DSCR report upon execution of this Promissory Note and does further agree to provide quarterly DSCR reports and quarterly financial statements in accordance with the payments schedules set forth in the preceding paragraph and shall provide said DSCR report and financial statements at the time of such quarterly payments.

The indebtedness shall be amortized over a term of thirty (30) years with interest at three percent (3.0%) compounded annually. If not sooner paid, any and all remaining indebtedness shall be due and payable in full on the first (15th) day of May, 2044 (the "Maturity Date").

NONRECOURSE TO MAKER

(a) Anything contained herein or in the Mortgage to the contrary notwithstanding, neither Promissor nor any general or limited partner of Promissor shall have any personal liability for any breach, default or event of default hereunder or under the Mortgage, and, upon the occurrence of an event of default hereunder or under the Mortgage, Holder's recourse shall be limited to the collateral securing the loan, and no deficiency shall be sought against Promissor or any general or limited partner of Promissor with respect thereto.

(b) Notwithstanding anything herein to the contrary, Promissor hereby makes subject and subordinate the payment of the principal under this promissory note and the Mortgage, together with any and all interest accrued or to accrue thereon and fees and expenses and other amounts incurred by Holder, to the loans (the "Senior Loans") made by any and all current and future mortgage lenders ("Senior Mortgage Lenders"), including PNC Bank, National Association ("PNC"), its successors and assigns, to Promissor, the documents evidencing, supporting or securing the Senior Loans (the "Senior Loan Documents"), the liens and all rights of Senior Mortgage Lenders under the Senior Loan Documents and the payment of principal, interest, fees, costs and expenses and other amounts due and owing under the Senior Loan Documents (including interest accruing after the date on which Promissor becomes subject to the jurisdiction of any federal or state debtor relief statute, whether or not recoverable against Promissor) by Promissor, and Holder agrees, after it has received notice from a Senior Mortgage Lender that a default has occurred and is continuing under the terms of the Senior Loan Documents not to ask, demand, sue for, exercise or take other enforcement actions with respect to any right of setoff or take or receive payment of, or discharge Promissor from all or any part of, the amounts due under this promissory note or the Mortgage unless and until the Senior Loans, and all other amounts due Senior Mortgage Lenders under terms of the Senior Loan Documents, shall have been fully and undefeasibly paid in cash and discharged as provided in that certain Intercreditor and Subordination Agreement among Promissor, PNC and the City.

Promissor reserves the right to prepay this debt at any time, in whole or in part without payment of penalty, premium or fee. All payments made by Promissor shall be applied first to the interest due and then to the principal.

In the event the undersigned shall fail to pay any sum herein required to be paid when due and if

such failure be subsisting on the date the next installment payment under this Note becomes due and payable, the unpaid principal amount of this note, together with accrued interest, shall become immediately due and payable, at the option of the Holder, without notice to the undersigned. Failure of the Holder to exercise such option shall not constitute a waiver of such default.

If any scheduled payment is in default more than ten (10) days, the undersigned shall pay to the Holder a late charge not to exceed five percent (5.0%) per annum of the amount of such scheduled monthly payment in default. If said Note be reduced to judgment, such judgment shall bear the statutory interest rate on judgments.

This Note is secured by the Mortgage as heretofore referenced.

Demand, protest and note of demand and protest are hereby waived, and the undersigned hereby waives, to the extent authorized by law, any and all homestead and other exemption rights which otherwise would apply to the debt evidenced by this Note.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed by its duly authorized representative, as of the _____ day of December, 2012.

SPRING BRANCH, LTD.,
an Alabama limited partnership

By: Spring Branch, LLC
Its: General Partner

By: Neighborhood Concepts, Inc.
Its: Managing Member

By: _____
Mary Ellen Judah
Its: Executive Director

The foregoing terms, conditions, modifications, and amendments, including the recitals which are set forth in this Modification and Restatement of Promissory Note, are hereby ratified, affirmed, approved and accepted as of the _____ day of December, 2012.

CITY OF HUNTSVILLE, ALABAMA, a
municipal corporation within the State of
Alabama

ATTEST: _____
Charles E. Hagood
as Clerk-Treasurer of City Huntsville,
a municipal corporation within the
State of Alabama

By: _____
Tommy Battle
Its: Mayor

EXHIBIT A

LEGAL DESCRIPTION

Lot 4, Block 1, according to the map of survey of the resurvey of Lot 4, Block 1, Binford Court Subdivision, Huntsville, Alabama, as recorded in Plat Book 26, at Page 20, Probate Records of Madison County, Alabama (the "Property").

This Instrument was prepared by:
 Richard K. Bonness, Esq.
 Kutak Rock LLP
 1650 Farnam Street
 Omaha, NE 68102

After recording return to above.

INTERCREDITOR AND SUBORDINATION AGREEMENT

THIS INTERCREDITOR AND SUBORDINATION AGREEMENT (this "Agreement") is made as of December __, 2012, by and among **SPRING BRANCH LTD.**, an Alabama limited partnership ("Partnership"), **PNC BANK, NATIONAL ASSOCIATION**, a national banking association ("PNC"), **THE CITY OF HUNTSVILLE**, an Alabama municipal corporation ("City"). City and PNC shall each be referred to individually as a "Lender" or an "Advancing Party" and all of them collectively as the "Lenders" or "Advancing Parties."

INTRODUCTORY STATEMENTS

Partnership intends to develop Spring Branch Apartments (the "Project"), located on the real property described in Exhibit A, consisting of 70 multifamily housing units.

PNC has agreed to make a construction/term loan to Partnership up to the total principal amount of \$[1,735,000] (the "PNC Construction/Term Loan") and a bridge loan to Partnership up to the total principal amount of \$[3,451,855] (the "PNC Bridge Loan"; together with the PNC Construction/Term Loan, the "PNC Loan") to assist in financing the development and construction of the Project, and has entered into a Construction Loan, Bridge Loan and Security Agreement dated as of December __, 2012 (the "PNC Loan Agreement"), with Partnership setting forth, among other things, the terms for PNC's approval of disbursements of proceeds of the PNC Loan and conditions of the PNC Loan. The PNC Loan Agreement, together with a certain promissory note, a bridge loan note, a mortgage, security agreement and assignment of rents and leases and all other documents evidencing or securing the obligations under the PNC Loan Agreement or the PNC Loan shall be referred to collectively as the "PNC Loan Documents."

City has previously made a [second]-priority lien UDAG Program loan to Partnership's predecessor in title in the principal amount of \$807,392 (the "UDAG Loan"), which loan has been, or will be as of the date hereof, assumed by Partnership and paid down by no less than approximately \$400,000 (the "UDAG Pay Down") on the Conversion Date (as defined in the PNC Loan Agreement). City has entered into an Agreement to Restructure Loan, Modify Promissory Notes, and Assumption Thereof dated as of December __, 2012 (the "UDAG Loan Agreement"), with Partnership setting forth, among other things, the terms and conditions of the UDAG Loan. The UDAG Loan Agreement, together with a certain Modification and Restatement of Promissory Note, Fourth Modification to Mortgage and Assumption Agreement dated December, 2012 by **NBA, LTD. to Borrower** and all other documents evidencing or securing the obligations under the UDAG Loan Agreement or the UDAG Loan shall be referred to collectively as the "UDAG Loan Documents." The UDAG Loan was fully advanced prior to the date of this Agreement.

City has previously made a [third]-priority lien CDBG Program loan to Partnership's predecessor in title up to the total principal amount of \$283,190 (the "CDBG Loan") which loan has been, or will be as of the date hereof, assumed by Partnership. City has entered into an Agreement to Restructure Loan, Modify Promissory Notes, and Assumption Thereof dated as of December __, 2012 (the "CDBG Loan Agreement"), with Partnership setting forth, among other things, the terms and conditions of the CDBG Loan. The CDBG Loan Agreement, together with a certain Modification and Restatement of Promissory Note, Fourth Modification to Mortgage, and Assumption Agreement dated December __, 2012 by NBA, LTD. to Borrower] and all other documents evidencing or securing the obligations under the CDBG Loan Agreement or the CDBG Loan shall be referred to collectively as the "CDBG Loan Documents." The CDBG Loan was fully advanced prior to the date of this Agreement.

Each of the parties hereto desires to set forth the order in which the proceeds of the PNC Loan, the UDAG Loan and the CDBG Loan (collectively, the "Loans") will be disbursed to Partnership (the "Advances").

Each of the parties hereto further desires to clarify the rights and responsibilities of the parties in case of certain extraordinary events, including casualty, eminent domain taking, or default under any of the Loans.

AGREEMENT

NOW, THEREFORE, the parties hereto, intending to be legally bound, have entered into this Agreement as follows:

Section 1. Initial Draw Request and Advance at Closing. On the date on which the PNC Loan has been closed, and the UDAG Loan and CDBG Loan has been assumed by Borrower (the "Closing") as evidenced by the execution of the respective Loan Documents (as defined below) with respect to each Loan and the recordation in the public records of Madison County, Alabama, of any of the PNC Loan Documents, the UDAG Loan Documents and the CDBG Loan Documents (collectively, the "Loan Documents") which are approved by Lenders and required to be recorded, Partnership shall apply all of the proceeds of the initial draw under the PNC Loan and the full amount of the Initial Equity Amount (as defined in the PNC Loan Agreement) to certain costs of Partnership due at Closing, as such costs are set forth in a draw request as approved by Lenders at Closing (the "Initial Draw Request").

Section 2. [Intentionally Omitted.]

Section 3. Sequence of Advances. Subject to the requirements of each Lender's respective Loan Documents, Advances shall be made in the following sequence:

- (i) at closing, the full amount of the Initial Equity Amount and a portion of the PNC Loan as approved by PNC;
- (ii) next, the full amount of the Additional Equity Amount; and
- (iii) next, the proceeds of the PNC Construction/Term Loan, subject to retainage as set forth in the PNC Loan Documents; and

(iv) next, the proceeds of the PNC Bridge Loan, subject to retainage as set forth in the PNC Loan Documents.

Without limiting such additional conditions as may be set forth elsewhere in this Agreement or under PNC's Loan Documents, the initial Advance by PNC of the PNC Loan shall be subject to the Additional Equity Amount having been fully funded.

Section 4. [Intentionally Omitted.]

Section 5. Lien Priorities; Lien Subordination. Partnership and each of the Lenders acknowledge and agree, notwithstanding the actual order of recording, that the relative priority of the following instruments and related liens and encumbrances shall be in the order set forth below, and each Lender consents to the Partnership's encumbrance of the Project by such liens and encumbrances:

- (a) first, the mortgage securing the PNC Loan;
- (b) next, the mortgage securing the UDAG Loan; and
- (c) last, the mortgage securing the CDBG Loan.

City hereby subordinates and subjects the liens and encumbrances created under the UDAG Loan Documents and the CDBG Loan Documents (collectively, the "City Subordinate Liens"), to the liens and encumbrances created under the PNC Loan Documents. City agrees to execute, acknowledge (if required) and deliver to PNC a subordination agreement, an estoppel certificate and/or such other and further documents in a form reasonably satisfactory to PNC and City as PNC may request to effectuate and confirm the subordination reflected in the preceding provisions of this Section 5.

Section 6. Payment Subordination, Standstill and Consent to Assignment.

(a) ***Payment Subordination.*** PNC and UDAG agree that the right of payment evidenced and secured by the UDAG Loan Documents and the CDBG Loan Documents is and shall be subject and subordinated in right of payment to the prior payment in full in cash of the indebtedness evidenced and secured by the PNC Loan Documents; provided that except as otherwise provided in Section 6(c) below, City shall have the right to receive the cash flow payments and UDAG Pay Down as provided in the UDAG Loan Documents and the CDBG Loan Documents, respectively.

(b) ***Default Under Subordinate Loan Documents.***

(i) So long as the PNC Loan remains outstanding, upon a default or event of default under the UDAG Loan Documents ("UDAG Loan Default") or event of default under the CDBG Loan Documents ("CDBG Loan Default"), City shall not exercise any rights or remedies that it may have under its Loan Documents, including, without limitation, the right to ask, demand, sue for, exercise or take other enforcement actions with respect to any right of setoff or take or receive payment of, or discharge Partnership from, all or any part of its Loan

until the PNC Loan is repaid in full in cash. City shall deliver to PNC a notice of a UDAG Loan Default or a CDBG Loan Default within five business days in each case where City has given a notice thereof to Partnership. As between Lenders, notwithstanding anything to the contrary in the Loan Documents, upon the distribution of any of Partnership's assets, whether by reason of sale, reorganization, liquidation, dissolution, arrangement, bankruptcy, receivership, assignment for the benefit of creditors, foreclosure or otherwise, PNC shall be entitled to receive payment in full in cash of all amounts due the under the terms of the PNC Loan Documents (including, without limitation, interest arising subsequent to the date of the filing by or against Partnership of any petition for relief under the Federal Bankruptcy Code or the making of any assignment for the benefit of creditors, whether or not such interest is recoverable from or provable against Partnership) prior to the payment of all or any part of the UDAG Loan or the CDBG Loan. City covenants that, so long as the PNC Loan remains outstanding, City shall not file a petition commencing an involuntary bankruptcy proceeding against or seek the appointment of a receiver for Partnership or take any action in furtherance of the foregoing.

(ii) [Intentionally omitted].

(c) ***Default under PNC Loan Documents.***

(i) Partnership agrees that, after it receives notice (or otherwise acquires knowledge) of an Event of Default under the PNC Loan Documents ("PNC Loan Default"), it will not make any payments under or pursuant to the UDAG Loan Documents or the CDBG Loan Documents (including, but not limited to, principal, interest, additional interest, late payment charges, default interest, attorneys' fees, or any other sums secured by the City's subordinate mortgages) without PNC's prior written consent. City agrees that, after it receives such notice from PNC with written instructions directing City not to accept payments from Partnership on account of the UDAG Loan or the CDBG Loan, it will not accept any payments under or pursuant to the UDAG Loan Documents or the CDBG Loan Documents (including, but not limited to, principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by City's subordinate mortgages) without PNC's prior written consent. If City receives written notice from PNC that the PNC Loan Default which gave rise to City's obligation not to accept payments has been cured, waived or otherwise suspended by PNC, the restrictions on payment to City in this paragraph shall terminate, and PNC shall have no right to any subsequent payments made to City by Partnership prior to City's receipt of a new default notice from PNC in accordance with the provisions of this paragraph.

If, after City receives a PNC Loan Default notice in accordance with this subsection (c), City receives any payments under the UDAG Loan Documents or the CDBG Loan Documents, City agrees that such payment or other distribution will be received and held in trust for PNC and, unless PNC otherwise notifies City in writing, will be promptly remitted, in kind to PNC, properly endorsed to PNC, to

be applied to the principal of, interest on and other amounts due under the PNC Loan Documents. By executing this Agreement, Partnership specifically authorizes City to endorse and remit any such payments to PNC and specifically waives any and all rights to have such payments returned to Partnership or credited against the UDAG Loan or the CDBG Loan, as applicable. Partnership and PNC acknowledge and agree that payments received by City and remitted to PNC under this Section shall not be applied or otherwise credited against the UDAG Loan or the CDBG Loan, nor shall the tender of such payment to PNC waive any UDAG Loan Default or CDBG Loan Default which may arise from the inability of City to retain such payment or apply such payment to the UDAG Loan or CDBG Loan.

(ii) [Intentionally Omitted.]

(d) *[Intentionally Omitted.]*

(e) ***Remaining Proceeds.*** Upon (i) the distribution of any of Partnership's assets, whether by reason of sale, reorganization, liquidation, dissolution, arrangement, bankruptcy, receivership, assignment for the benefit of creditors, foreclosure or otherwise and (ii) the receipt by PNC in full in cash of all amounts due the under the terms of the PNC Loan Documents (including, without limitation, interest arising subsequent to the date of the filing by or against Partnership of any petition for relief under the Federal Bankruptcy Code or the making of any assignment for the benefit of creditors, whether or not such interest is recoverable from or provable against Partnership), PNC agrees that any remaining proceeds shall be made available to City, all in accordance with applicable law.

Section 7. Application of Insurance and Condemnation Proceeds. The Lenders and Partnership each acknowledge and agree that PNC shall make all determinations as to sufficiency of available insurance proceeds or condemnation award proceeds ("Proceeds") and feasibility of restoration of the Project in accordance with the PNC Loan Documents, including without limitation, Section 4(a) of the Security Instrument (as defined in the Loan Documents). If PNC determines that the Proceeds are not sufficient to make the repair and restoration of the Project feasible, then PNC shall give prompt written notice of such determination to City, whereupon the Proceeds shall be applied in accordance with their respective Loan Documents, in the same order and manner as the lien priorities governing such Loan Documents as set forth above.

Section 8. Opportunity To Cure. Lenders shall each deliver a copy of any default notice delivered to Partnership to the other Lender. Partnership shall have the right to cure, and each Lender shall have the concurrent right, but not the obligation, to cure, any default under the Loan Documents for which a default notice has been given. For City, such cure shall be completed within the same cure period, if any, as provided the Partnership under the PNC Loan Documents. For PNC, such cure shall be completed within 20 days following the delivery of such default notice to PNC for any default curable by the payment of money, within 10 days following the delivery of such default notice for any default caused by failure to maintain required insurance coverage, and within 60 days following the delivery of such default notice to the PNC for any nonmonetary default, provided that, with respect to any such nonmonetary default, PNC shall (a) promptly provide City with written notice of its intent to effect a cure, and thereafter (b) commence action, within 30 days following delivery of the default notice, to cure the noticed default.

Amounts, if any, paid by a Lender as determined in its sole and absolute discretion, with respect to curing a default under any of the Loan Documents shall constitute indebtedness owed by Partnership to such Lender.

Section 9. Operating Agreement, Transfers of Partnership Interests, Etc. Notwithstanding anything to the contrary in the PNC Loan Documents, Lenders and Partnership agree and acknowledge as follows:

(a) None of the Partners (as defined in the PNC Loan Agreement) shall sell, assign, give, mortgage, pledge, hypothecate, encumber or otherwise transfer (except by operation of law upon death) any interest in Partnership, or transfer a controlling or managing interest in any entity which owns directly or indirectly through one or more intermediate entities, a controlling interest in Partnership, without the prior written consent of PNC.

(b) Neither Partnership nor any Partner or Guarantor (as defined in the PNC Loan Agreement) not an individual shall dissolve or liquidate without the prior written consent of PNC.

(c) No Partner or Guarantor shall merge into or consolidate with any entity, nor shall any entity merge into or consolidate with any such Partner or Guarantor without the prior written consent of PNC. This restriction shall continue to apply to all subsequent mergers and consolidations involving each such Partner, Guarantor and their respective successors.

(d) Neither Partnership nor any Partner or Guarantor which is a partner of Partnership shall amend, modify, supplement or terminate any of the Borrower Documents (as defined in the PNC Loan Agreement) without the prior written consent of PNC.

(e) Partnership and each Partner shall at all times perform their obligations under the Borrower Documents.

Nothing in this Section 9 obviates the Partnership's or Guarantor's obligations to comply with the Lenders' respective loan document provisions regarding the transfer and amendment provisions described above.

Section 10. [Intentionally Omitted.]

Section 11. [Intentionally Omitted.]

Section 12. Modification.

(a) No modifications, changes or amendment of this Agreement shall be valid or enforceable unless in writing and approved by each of the parties hereto.

(b) City may not (a) take or direct any action (including increases in interest rates other than as set forth in its respective Loan Documents as of the date hereof, without amendment) which has the effect of increasing the indebtedness outstanding under its

respective Loan Documents; (b) modify construction start or completion dates; (c) amend, modify or supplement in any material respect any provision of its respective Loan Documents; or (d) enter into or require any additional material agreement with Partnership in connection with its respective Loan or the Project, without, in each instance, the prior written consent of PNC.

(c) City acknowledge and agree that PNC may amend the PNC Loan Documents without the prior consent of City notwithstanding any provision in City's respective Loan Documents to the contrary; *provided* PNC may increase the PNC Loan amount, term or interest rate under its Loan Documents only with the prior written consent of City, which consent shall not be unreasonably withheld, delayed or conditioned; *provided, further*, upon the occurrence of a PNC Loan Default, City will consent to any amendment to the PNC Loan Documents to extent necessary to satisfy PNC's then-current underwriting and pricing standards.

Section 13. Miscellaneous Provisions.

(a) ***Termination of Agreement.*** The terms of this Agreement, and the rights of each party as provided in this Agreement, are applicable and available to each Lender only until the repayment of the obligations of Partnership to that Lender which are subject to this Agreement. Upon the repayment in full in cash of such obligations and, where applicable, expiration of such regulatory instruments, that Lender shall no longer be a party to this Agreement and the various priorities included above shall be deemed amended by the deletion of that (former) Lender and its respective Loan Documents from this Agreement, except that in the event that such (former) Lender is required, pursuant to Section 547 of the Bankruptcy Reform Act of 1978 or a successor provision to repay any amount paid to that (former) Lender by Partnership in satisfaction of such liabilities, then such Lender shall be deemed a party to this Agreement entitled to all benefits under this Agreement to the extent that any of Partnership's assets are thereafter distributed pursuant to this Agreement.

(b) ***Governing Law.*** This Agreement shall be governed by and construed in accordance with the law of the State of Alabama. Venue for the adjudication of any legal dispute arising out of this Agreement shall be in any court of competent jurisdiction in the State of Alabama.

(c) ***Notices.*** All notices under this Agreement shall be in writing and shall be effective when sent by mail, reputable overnight delivery service or facsimile (with confirmation of receipt) to persons at the addresses as set forth below unless otherwise designated in writing by the respective party:

Partnership:	Spring Branch Ltd.
	c/o Neighborhood Concepts, Inc.
	116 S. Jefferson Street
	Huntsville, AL 35801
	Attention: Mary Ellen Judah
	Facsimile: (256) 713-4381

with a copy to: Rice Land & Development Corporation
2600 East South Boulevard, Suite 225
Montgomery, AL 36116
Attention: Jeff Rice
Facsimile: (334) 286-0142

PNC: PNC Bank, National Association
Suite 2300
500 West Jefferson Street
Louisville, KY 40202
Attention: Commercial Real Estate Loan Administration
Facsimile: (502) 581-3831

with copy to: Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102-2186
Attention: Richard K. Bonness, Esq.
Telephone: (402) 346-6000
Facsimile: (402) 346-1148

City: City of Huntsville
Community Development Department
120 Holmes Avenue
Huntsville, AL 35801
Attention:-Ken Benion
Facsimile: (256) 427-5431

With copy to: City of Huntsville
City Attorney's Office
City Hall, 6th Floor
308 Fountain Circle
Huntsville, AL 35801

Attention:- Peter Joffrion
Facsimile: (256) 427-5043

(d) **Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original and shall be deemed executed on the date on which it was signed by the final signatory.

(e) **Binding on Successors and Assigns.** This Agreement shall be binding upon the parties hereto and upon their respective successors and assigns.

(f) **Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(g) ***Waiver of Trial by Jury.*** Each party to this Agreement hereby waives any right it may have to a trial by jury with respect to any litigation directly or indirectly arising out of, under or in connection with this Agreement. Each party (i) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such party would not, in the event of litigation, seek to enforce the foregoing waiver, and (ii) acknowledges that the entering into of this Agreement has been induced by, among other things, the waivers and certifications set forth in this section. Each party further acknowledges that it has been represented (or has had the opportunity to be represented) in the signing of this Agreement and in the making of the waivers herein contained by independent legal counsel, selected of its own free will, and has had the opportunity to discuss said waivers with counsel.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Intercreditor and Subordination Agreement to be effective as of the day and year first above written, although actually executed on the date(s) set forth in the respective acknowledgments below.

SPRING BRANCH LTD., an Alabama limited partnership

By: **SPRING BRANCH LLC**, an Alabama limited liability company, its Partnership Manager

By: **NEIGHBORHOOD CONCEPTS, INC.**, an Alabama non-profit corporation, its Manager

By: _____

Name: _____

Title: _____

**THE CITY OF HUNTSVILLE, an Alabama
municipal corporation**

By: _____

Name: _____

Title: _____

PNC BANK, NATIONAL ASSOCIATION

By _____
Wendy S. Bade
Senior Vice President

[ACKNOWLEDGMENT PAGE 1 OF 2 TO INTERCREDITOR AGREEMENT]

STATE OF _____)
) ss.
COUNTY OF _____)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that _____ whose name is signed as _____ of Neighborhood Concepts, Inc., an Alabama non-profit corporation, in its capacity as Manager of Spring Branch LLC, an Alabama limited liability company, in its capacity as Partnership Manager of Spring Branch Ltd., an Alabama limited partnership, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as Manager of said limited liability company, acting in its capacity as Partnership Manager of said limited partnership as aforesaid. Given under my hand this ____ day of _____, A.D. 2012.

Notary Public

STATE OF _____)
) ss.
COUNTY OF _____)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that _____ whose name is signed as _____ of The City of Huntsville, an Alabama municipal corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said municipal corporation as aforesaid. Given under my hand this ____ day of _____, A.D. 2012.

Notary Public

[ACKNOWLEDGMENT PAGE 2 OF 2 TO INTERCREDITOR AGREEMENT]

COMMONWEALTH OF KENTUCKY)
COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Wendy Bade, whose name as Senior Vice President of PNC Bank, National Association, a national banking association, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said banking association.

Given under my hand and official seal this the ____ day of _____, 2012.

Notary Public